

**State of Kansas
Department of Health and Environment**

Notice of Hearings on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Water, will conduct public hearings at the following locations on the following dates to consider the adoption of the following proposed amended, new, and revoked regulations:

Water Pollution Control

K.A.R. 28-16-56c, K.A.R. 28-16-56d

Animal and Related Waste Control

K.A.R. 28-18-1, 28-18-2, 28-18-4, 28-18-8, 28-18-9, 28-18-11, 28-18-12, 28-18-13,
28-18-14, 28-18-16 (new), 28-18-17 (new)

Swine and Related Waste Control

K.A.R. 28-18a-1, 28-18a-2, 28-18a-4, 28-18a-8, 28-18a-9, 28-18a-11, 28-18a-12,
28-18a-19, 28-18a-21, 28-18a-22, 28-18a-26, 28-18a-32 (revoked), 28-18a-33 (new),

Before the start of each public hearing, KDHE staff will be available to answer questions.

1. September 25, 2006 , Staff available for questions at 6 PM, hearing starts at 7 PM

Garden City Community College

801 Campus Drive

Beth Tedrow Student Center (Building), Endowment Room

Garden City, Kansas 67846

2. September 27, 2006, Staff available for questions at 6 PM, hearing starts at 7 PM
Memorial Hall Auditorium
120 SW 10th Ave
Topeka, Kansas 66612

A summary of the proposed regulations, their environmental benefit, and the estimated economic impact follows:

K.A.R. 28-16-56c and 56d. Sewage permit fees; definitions and schedules. The proposed amendments alphabetize the currently defined terms, replaces animal unit and confined feeding facility definitions with statutory definitions, modifies the terms “Industrial wastewater treatment facility,” and “Storm water discharge,” and defines the new term “Private truck-washing facility for animal wastes.” The amendments also revise the permit fee schedule by adding specific types of facilities and associated fees defined by statute. Within the context of the regulatory impact statement the proposed amendments will not have a direct impact on public health or the environment as they are primarily administrative in nature. The proposed amendments do not subject the affected parties, the general public, or any unit of government to additional direct costs.

K.A.R. 28-18-1 and 28-18a-1. Definitions. The proposed amendments update references to other existing regulations and define new terms that have been introduced as part of the proposed regulations and amendments. The revisions include definitions or changes to definitions for the following terms, “Closure plan,” “Equus Beds,” “Groundwater,” “Impermeable synthetic membrane liner,” “Nutrient management plan,” “Public livestock market,” “Salt solution mining well,” “Sensitive groundwater areas,” “Truck-washing facility for animal wastes,” “Waste management plan,” and “Whole pond seepage test.” Within the context of the regulatory impact statement the

proposed amendments will not have a direct impact on public health or the environment as they are primarily administrative in nature. The proposed amendments do not subject the affected parties, the general public, or any unit of government to additional direct costs.

K.A.R. 28-18-2 and 28-18a-2. Registration and application requirements. The proposed amendments will clarify which public livestock markets are required to apply for a permit. The proposed amendments are a result of recent statutory changes (L. 2003, ch.18, sec. 2). Within the context of the regulatory impact statement the proposed amendments will not have a direct impact on public health or the environment as they are primarily administrative in nature. The proposed amendments do not subject the affected parties, the general public, or any unit of government to additional direct costs.

K.A.R. 28-18-4 and 28-18a-4. Filing of applications and payment of fees. The proposed amendments reflect proposed modifications to other regulations addressing closure of waste lagoons located over the Equus Beds for facilities with 1,000 or more animal units. Additionally, the contents of permit applications for confined feeding facilities has been modified to address current program requirements. Within the context of the regulatory impact statement the proposed amendments will not have a direct impact on public health or the environment as they are primarily administrative in nature. The proposed amendments do not subject the affected parties, the general public, or any unit of government to additional direct costs.

K.A.R. 28-18-8 and 28-18a-8. Permit; terms and conditions. The proposed amendments remove requirements having the same purpose or effect as requirements found in other sections of the existing regulations. Subsection (e) is eliminated since reporting of changes or modifications to individual farming plans is unnecessary. Agronomic use of wastes is required by other current

regulations. Within the context of the regulatory impact statement the proposed amendments will not have a direct impact on public health or the environment as they are primarily administrative in nature. The proposed amendments do not subject the affected parties, the general public, or any unit of government to additional direct costs. The affected parties may realize some cost savings due to the elimination of the reporting requirement. The estimated cost savings are less than \$1 per facility.

K.A.R. 28-18-9 and 28-18a-9. Certification; terms and conditions. The proposed amendments address the terms and conditions to be included in each certification or permit. Modification has been made to clarify that the issuance of a permit is of itself not an enforcement action. Within the context of the regulatory impact statement the proposed amendments will not have a direct impact on public health or the environment as they are primarily administrative in nature. The proposed amendments do not subject the affected parties, the general public, or any unit of government to additional direct costs.

K.A.R. 28-18-11 and 28-18a-11. Confined feeding facilities; federal requirements. The proposed amendments adopt, by reference, some of the recently revised Environmental Protection Agency (EPA) concentrated animal feeding operation requirements which became effective nationwide on April 12, 2003. A lawsuit was brought against EPA challenging the 2003 requirements. The court reached a decision on February 28, 2005. The court ruling vacated some of the 2003 EPA requirements. As a result of the court ruling, KDHE modified the proposed revisions to the regulations that KDHE proposed in January 2005. Instead of adopting all of the EPA requirements, KDHE is proposing to adopt only those portions not remanded. The final EPA regulations, proposed to be adopted by KDHE, are revisions and updates to the previous 1974 EPA requirements which KDHE had adopted and are currently implemented. The incorporation of the

revised EPA rules will enable the State to continue to manage the federal water pollution control permitting program in Kansas rather than the federal government. The primary revision to the 1974 EPA requirements address management and use of the manure from concentrated animal feeding operations. The new measures will provide an environmental benefit by requiring the facility operator to plan, in advance, for the agronomic use of animal wastes. Along with requiring the operator to implement the planned management practices designed to 1) minimize pollutant discharges from confined animal feeding facilities and 2) to minimize contaminated runoff into Kansas surface waters from fields where the animal waste is used. The proposed amendments will increase capital and annual operating costs for the affected parties. When revising the 1974 regulations the EPA worked closely and with the support of the United States Department of Agriculture. The Environmental Quality Incentives Program (EQIP) of the 2002 Farm Bill substantially increased the availability of funds to all confined animal feeding facilities, regardless of size, to assist in them in complying with the revised EPA regulations. Capital and annual costs will vary considerably depending upon the size of confined feeding facility, local climate, current waste management capabilities, and availability of suitable crop, pasture, and range land upon which to manage the collected wastes. Swine facilities are not expected to be impacted due to Kansas legislation created in 1998 requiring swine facilities to conduct nutrient utilization planning. KDHE estimates of the capital costs for non-swine facilities (beef, dairy, poultry, etc.) to **develop** site specific, detailed plans to manage and utilize the facility wastes will range from less than \$1,000 to more than \$40,000 depending on the range of variables previously described. Estimates of capital costs to make any necessary improvements to the land application system to distribute the wastes range from \$500 or less to several hundred thousand dollars or more, again depending on site

specific variables previously described. Estimates of the annual costs for non-swine facilities (beef, dairy, poultry, etc.) to **implement** their nutrient management plan range from \$325 to \$20,000 or more with the cost highly dependent upon the site specific variables previously described. The proposed amendments do not subject the general public or any unit of government to additional direct costs.

K.A.R. 28-18-12 and 28-18a-12. Design and construction of animal waste and swine waste management and swine pollution control systems. The proposed amendments will: 1) correct references to other existing regulations; 2) clarify that only those changes made after KDHE approval that affect the scope, boundaries, collection, handling, treatment, use, or disposal of the animal waste, require the facility to amend the construction plans and seek approval of the changes by the department prior to implementing the change; 3) incorporate minimum design standards which have been rewritten to distinguish between requirements and guidance; and 4) reduce construction reporting to allow KDHE to focus its review of post construction information to those facilities with site-specific concerns or risks. Within the context of the regulatory impact statement the proposed amendments will not have a direct impact on public health or the environment. The proposed amendments do not subject the affected parties, the general public or any unit of government to additional direct costs, although the amendments are expected to create some efficiencies for the affected parties and KDHE by clarifying when KDHE approval is needed and providing flexibility in evaluating construction activities.

K.A.R. 28-18-13 and 28-18a-19. Operation of animal waste and swine waste management and swine pollution control systems. The proposed amendments address protection of groundwater resources in Sensitive Groundwater Areas. The amendments affect facilities with

less than 1,000 animal units. Similar requirements for facilities with more than 1,000 animal units are contained in the revised EPA regulations proposed for adoption in K.A.R. 28-18-11 and 28-18a-11. It is proposed that facilities with less than 1,000 animal units, with land application areas in Sensitive Groundwater Areas, sample and test the soil of those areas, which have been used for animal waste disposal, at least once every five years. These fields, in Sensitive Groundwater Areas, present an increased probability of affecting groundwater if animal wastes are applied at rates which exceed the ability of the crop to utilize the nutrients. The proposed modifications will provide an environmental benefit. Information on soil nutrient status can be monitored to determine if sub-soil nitrogen levels are increasing. If an upward trend is noted, then it will be apparent nitrates are being leached into the deeper soil layers and possibly into the groundwater thereby contaminating a source of drinking water. The information can also be monitored for elevated levels of phosphorus which can be eroded or carried into streams and lakes creating eutrophication of the water bodies and leading to fish kills and taste and odor problems for public water supplies. There are no projected capital costs to the affected parties for them to be able to conduct the soil sampling. The projected annualized cost for the affected facilities, those with fewer than 1,000 animal units which have applied manure to a field in a Sensitive Groundwater Area, to collect the samples, have the samples analyzed, and to send KDHE a copy of the test results are projected to be \$5 to \$10 per year. The proposed amendments do not subject the general public or any unit of government to additional direct costs.

K.A.R. 28-18-14 and 28-18a-21. Inspections. The current regulations address the compliance of KDHE inspectors with the bio-security plans of those confined feeding facilities and swine facilities that implement a bio-security plan at their facility. The section has been amended

to remove references to dates and deadlines that have passed. Within the context of the regulatory impact statement the proposed amendments will not have a direct impact on public health or the environment as they are primarily administrative in nature. The proposed amendments do not subject the affected parties, the general public, or any unit of government to additional direct costs.

K.A.R. 28-18-16 and 28-18a-22. Animal waste-retention lagoon and swine facility closure requirements. K.A.R. 28-18-16 is newly proposed and is similar to the currently effective K.A.R. 28-18a-22 that is specific to swine. K.A.R. 28-18a-22 requires the development and implementation of a closure plan for those swine facilities with 3,725 or more animal units. The proposed new regulation and the proposed amended regulation are similar to the current regulation for large swine facilities, but the requirement to develop a closure plan, to be implemented at such time the facility ceases operation, is proposed to be extended to Equus Bed confined animal feeding facilities with 1,000 or more animal units. Bringing the closure planning requirement to the forefront for these facilities will ensure the owner is aware of requirements to manage the wastes until they have all been removed and that the contents of the closure plan have been accepted by KDHE. The requirement for facilities located in this significant groundwater resource area to plan in advance for closure and then follow through when the facility ceases operation will reduce the risk of any remaining waste to be left unmanaged and concentrated in one small area and to subsequently cause nitrate contamination of the groundwater. Capital costs to develop a closure plan for Equus Bed confined animal feeding facilities with 1,000 or more animal units are estimated to range from \$480 to \$3,600 per facility and no projected annual costs. The proposed amendments do not subject the general public or any unit of government to additional direct costs.

K.A.R. 28-18-17 and 28-18a-33. Groundwater protection requirements for animal

waste and swine waste-retention lagoons. The proposed new regulations will establish a siting requirement related to distance to groundwater and will establish a three tiered approach to requirements for lining waste-retention lagoons. The tiers are based on the most commonly used terms to define groundwater systems in Kansas and the relative degree of vulnerability and use of each groundwater system.

The proposed regulations will require the finished floor of each new or expanded portion of waste-retention lagoons and swine waste-retention lagoons to be a minimum of 10 feet above groundwater. Additionally, the proposed regulations establishes site-specific seepage rates which are not to be exceeded.

The proposed rules will have an environmental benefit by establishing requirements to reduce the level of seepage in proportion to the vulnerability and degree of use of the groundwater resource at the location of the waste-retention lagoons or swine waste-retention lagoons. The reduced levels of seepage will reduce the quantity of ammonium (In the environment, ammonium is readily converted to nitrate.) moving into the soils surrounding the waste-retention lagoons. The reduced ammonium movement will limit the potential for its conversion into nitrate and thus reduce the risk of nitrate contamination of groundwater. Nitrate at relatively low levels is toxic to unborn children and infants and at slightly higher levels can cause toxicity problems for adults. The proposed amendments could create additional direct costs for the affected parties, but government units and the general public should not incur additional direct costs. The additional direct costs to affected parties, if any, will be primarily dependent upon the availability of alternative locations (those which would meet requirements) for the facility and the willingness of the facility owner to consider alternative locations. Capital costs could range from \$0 to several hundred thousand dollars

depending on the site selected by the owner and availability of alternative sites. Annual costs to the affected parties, if any, are estimated to range from \$0 to \$120,000. Again, the cost is highly dependent on the owners site selection and the availability of alternative sites.

K.A.R. 28-18a-26. Requirements for swine facility operator certification. This regulation currently implements the statutory requirement for swine facilities with 1,000 or more animal units to be operated by a certified swine facility operator. The proposed amendment removes references to dates and deadlines that have passed. Within the context of the regulatory impact statement the proposed amendments will not have a direct impact on public health or the environment as they are primarily administrative in nature. The proposed amendments do not subject the affected parties, the general public, or any unit of government to additional direct costs.

K.A.R. 28-18a-32. Swine waste-retention lagoons in sensitive groundwater areas. This existing regulation addresses swine waste-retention lagoon liner requirements. This regulation is proposed to be revoked. The terms defined in this existing regulation have been incorporated into 28-18a-1, Definitions. Swine waste-retention lagoon liner requirements have been more clearly delineated in K.A.R. 28-18a-33. Within the context of the regulatory impact statement this revocation will not have a direct impact on public health or the environment. The proposed revocation does not subject the affected parties, the general public, or any unit of government to additional direct costs.

The time period between publication of this notice serves as the required public comment period of at least 60 days for the purpose of receiving written public comments on the proposed amended, new, and revoked regulations. At any time during the public comment period any interested parties may submit written comments to Claudia Elkins, Kansas Department of Health and

Environment, Bureau of Water, 1000 SW Jackson, Ste 420, Topeka, KS 66612-1367. Written comments can also be sent via E-mail to feedlots@kdhe.state.ks.us, with the request that the subject line indicate "proposed regulations" and that any text attachments be in Word or Word Perfect and any graphic attachments be in JPEG or JPG format.

All interested parties intending to provide oral comments will be given a reasonable opportunity to present their views of the proposed amended, new and revoked regulations during each hearing. In order to give each individual or entity an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit their presentation to an appropriate time frame.

Because of the expected level of public participation at the hearings, KDHE recommends that individuals intending to present oral comments at the hearings provide the hearing officer with a written copy of their comments during the hearing. This will ensure KDHE receives each presenter's comments in the event presentation times are limited.

Complete copies of the proposed regulations, corresponding regulatory impact statement, "Design Standards for Confined Feeding Facilities, July 1, 2006," "Kansas Sensitive Groundwater Areas for Wastewater Lagoons, January 1, 2005" and referenced EPA regulations may be obtained on the Bureau of Water website: www.kdhe.state.ks.us/feedlots or by contacting the Bureau of Water, 1000 SW Jackson, Suite 420, Topeka, KS 66612-1367, 785-296-6432.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and regulatory impact statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Laura Johnson by phone at 785-296-6432 or by fax at 785-296-

5509.

Roderick L. Bremby

Secretary of Health and Environment